

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LUKE RICHEY and JENNIFER  
RICHEY,

Plaintiffs,

vs.

METAXPERT, LLC; PLAYXPERT,  
LLC; and CHARLES MANNING and  
KIMBERLY MANNING,

Defendants.

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METAXPERT, LLC; and  
PLAYXPERT, LLC,

Counterclaimants,

vs.

AARON LUKE RICHEY and  
JENNIFER RICHEY; and GRAVITY  
JACK, INC.,

Counterdefendants.

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BEFORE THE COURT, is Counterclaimants' Motion for Reconsideration  
Re: Order Re Motion to Quash, ECF No. 393, filed on July 28, 2011 and  
noted without oral argument on September 23, 2011.

On July 18, 2011, the Court entered an Order (ECF No. 382) quashing  
eleven investor Subpoenas issued by MetaXpert. MetaXpert now requests

1 the Court to reconsider its ruling because: 1) they have discovered new  
2 information concerning communication(s) between plaintiffs and its  
3 investors relevant to the claims, and 2) although they could  
4 theoretically obtain the information from plaintiffs, they claim that  
5 plaintiffs refuse to provide it. Also, MetaXpert points out that the  
6 Court made a mistake as to Anthony LaMonica, for whom there was no  
7 pending motion for the Court to quash his subpoena; Mr. LaMonica was a  
8 Gravity Jack customer who received a customer subpoena; and Mr. LaMonica  
9 never objected to his subpoena.

10 All the represented investors continue to object to the issuance of  
11 the subpoenas. Investors Mark Barnes, Myron Bloom, M.D., Deborah Bloom,  
12 Jeff Bosma, Caleb Clutter, David Fowler, Gale and Lucy Fowler, Rolf and  
13 Erika Goetzinger, Lisa Henry, Kevin and Patti Kahl (collectively called  
14 "Investors"), who are separately represented, argue that if there is a  
15 dispute between plaintiffs and MetaXpert regarding production of  
16 documents, then that should be decided by the Court on appropriate  
17 motion and should not involve the investors. Investors assert that they  
18 are friends and family members of the plaintiffs and should not be  
19 burdened with the intrusion sought by Counterclaimants.

20 Further, it is argued, that each investor's investment amount has  
21 no bearing on Counterclaimants' damages claim. The \$250,000 offering is  
22 simply startup capital for a new business. Finally, the Investors  
23 conclude, this is merely a discovery issue and dispute between these two  
24 parties and Counterclaimants should instead move to compel and request  
25 that the Court fashion a remedy, if, the information is somehow  
26 relevant.

1 Motions for reconsideration serve a limited function. Under the  
2 Federal Rules of Civil Procedure, motions for reconsideration may be  
3 made pursuant to Rule 59(e). The major grounds for granting a motion to  
4 reconsider a judgment are: (1) intervening change of controlling law;  
5 (2) availability of new evidence; and (3) the need to correct clear  
6 error or prevent manifest injustice. *School District No. 1J, Multnomah*  
7 *County Oregon v. ACands, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). A  
8 motion for reconsideration is not appropriately brought to present  
9 arguments already considered by the Court. *Backlund v. Barnhart*, 778  
10 F.2d 1386, 1388 (9th Cir.1985).

11 Counterclaimants do not argue that there has been a change of  
12 controlling law, but assert that newly discovered evidence, which the  
13 court did not have the benefit of, is available. Specifically  
14 Counterclaimants indicate that the newly discovered information is  
15 relevant to their counterclaims in this case. Counterclaimants concede  
16 that “[i]n theory, MetaXpert has more convenient and less burdensome  
17 sources to obtain the information it seeks from the investors: Gravity  
18 Jack and Luke Richey.” (ECF No. 394, at 9). However, this information  
19 has not been provided through any party or source thus far.  
20 Counterclaimants also concede the scope of the subpoenaed confidential  
21 and private information exceeds what was necessary.<sup>1</sup> The Court finds  
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23 <sup>1</sup>“Upon further reflection, MetaXpert is willing to  
24 compromise its request for specific financial details. If Gravity Jack  
25 or Richey had contacted MetaXpert after receiving the subpoenas,  
26 MetaXpert would have agreed to narrow the subpoenas to make it clear  
27 that bank statements and copies of personal checks or other specific  
financial information was not necessary, other than that MetaXpert is  
looking to confirm who is and who is not an investor, in what amount,  
because Gravity Jack refuses to disclose that information.” ECF No.  
362, at 25.

1 that Counterclaimants have made a showing of need and relevancy.

2 As to the Anthony LaMonica subpoena, it appears that the Court was  
3 mistaken in quashing what appears to be unopposed subpoena to a Gravity  
4 Jack customer rather than an investor.

5 The Court having considered the written argument of counsel, enters  
6 this Order. Accordingly,

7 **IT IS ORDERED** that:

8 1. Defendants/Counterclaimants' Motion For Reconsideration, **ECF No.**  
9 **393**, is **GRANTED**, **in part**.

10 2. The Investor Subpoenas shall be deemed amended to exclude  
11 paragraphs II.3 and II.4, and the Investors shall respond thereto within  
12 fourteen (14) calendar days from the date hereof.

13 3. Inasmuch as it was not the subject of a motion to quash, the  
14 subpoena served on non-Investor Anthony LaMonica shall be responded to  
15 by him within fourteen (14) days of the date hereof.

16 **IT IS SO ORDERED.** The District Court Executive is directed to  
17 enter this Order and forward copies counsel.

18 **DATED** this 6th day of October, 2011

19  
20 *s/Lonny R. Sukko*

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22 LONNY R. SUKKO  
23 UNITED STATES DISTRICT JUDGE  
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